

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

Mark Lott,

Plaintiff,  
v.

Sticks from the Yard, Inc.,  
Defendant.

Case No. 3:23-cv-00134-RMG-KFM

**ORDER AND OPINION**

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that the case should be dismissed without prejudice, without leave to amend, and without issuance of service of process. (Dkt. No. 9). Plaintiff filed an objection to the R&R. (Dkt. No. 11).

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objection, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted).<sup>1</sup>

Plaintiff, a civilly committed individual, alleges that Defendant failed to pay Plaintiff for hats Plaintiff crocheted and delivered to Defendant. (Dkt. No. 1 at 4-5). Plaintiff seeks \$1,500 in

damages from Defendant. (*Id.*; Dkt. No. 11). The Magistrate Judge found that Plaintiff's allegations do not give rise to federal question or diversity jurisdiction. (Dkt. No. 9 at 3-4). Specifically, the Magistrate Judge found that federal question jurisdiction does not exist because Plaintiff failed to allege that Defendant—a private company—acted under color of federal law, which is required to state a claim under *Bivens v. Siz Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1999). (*Id.*) The Magistrate Judge also found that amount in controversy requirement for diversity jurisdiction is not met here. (*Id.*)

After reviewing the full record in this matter, including Plaintiff's objections, the Court finds the Magistrate Judge ably addressed the issues presented and correctly concluded that this action should be dismissed without prejudice, without leave to amend, and without issuance of service of process. The Court adopts the R & R (Dkt. No. 9) as the order of the Court and dismisses the action without prejudice.

s/ Richard Mark Gergel  
Richard Mark Gergel  
United States District Judge

March 29, 2023  
Charleston, South Carolina